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May 28, 2020

VIA ECF

Honorable Lorna G. Schofield
United States District Judge
40 Foley Square, Courtroom 1106
New York, NY 10007

Re: *Jane Doe, et al. v. Trump Corp.*, Case No. 1:18-cv-09936

Dear Judge Schofield:

Yesterday, Plaintiffs submitted a letter ostensibly to update the Court on “certain developments” concerning the production of documents by third-parties Anne Archer Butcher and Dolphin Entertainment, who as this Court knows previously acted as independent consultants to separate third-party ACN Opportunity, LLC (“ACN”). ECF No. 274. At the end of the letter, Plaintiffs represented to the Court with quoted language that ACN “does not believe it is a fair or efficient use of [ACN’s] resources to proceed with further meet and confer efforts at this time.” Plaintiffs’ selective quotation of an email from the undersigned counsel inaccurately reflects ACN’s full position and the context in which the statement was made. ACN accordingly submits this letter to correct the record and clarify its position.

The quoted language in Plaintiffs’ letter was part of ACN’s response to Plaintiffs’ repeated demands that ACN meet and confer regarding the scope of discovery Plaintiffs have requested from ACN, which recently included a list of twenty custodians from whom Plaintiffs would have ACN produce documents.¹ ACN’s full response was as follows:

Andrew, thank you for your letters. Like Defendants, ACN will be seeking a stay and administrative stay from the Second Circuit. ACN’s position is therefore the same as before: while ACN understands the District Court’s Orders, and intends to comply with its obligations, it also intends to pursue all of its rights and remedies and does not believe it is a fair or efficient use of its resources to proceed with further meet and confer efforts at this time. We note that Plaintiffs have not yet responded to our last email regarding the NDA language, which ACN has indicated it is willing to negotiate as a separate issue.

¹ Plaintiffs’ proposed list of custodians includes ACN’s four co-founders, as well as other high-level employees of the company. Plaintiffs also have proposed that ACN search its internal files using such broadly invasive search terms as “(Independent Business Owner OR “IBO”) AND ((success! OR profit! OR fail! OR loss! OR gain! OR join! OR renew! OR quit! OR drop! OR leave!) AND (rate! OR percent! OR amount! OR number!).”

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See May 27, 2020 E-mail from S. Niehaus to A. Wilson, attached as Exhibit A.

What is more, almost immediately after submitting their letter to this Court, Plaintiffs notified the Second Circuit that they would *consent* to the administrative stay that Defendants have requested and that ACN indicated it planned to request. See Exhibit B. Thus, Plaintiffs' out-of-context representation of ACN's position not only was inaccurate and misleading, it appears to have been entirely superfluous.

Respectfully yours,

A handwritten signature in black ink, reading "Stephanie Niehaus". The signature is written in a cursive, flowing style.

Stephanie E. Niehaus

cc: All counsel of record via ECF

EXHIBIT A

Niehaus, Stephanie E.

From: Niehaus, Stephanie E.
Sent: Wednesday, May 27, 2020 2:48 PM
To: 'Andrew Wilson'
Cc: John Quinn; Nick Bourland
Subject: RE: Doe v. Trump

Andrew, thank you for your letters. Like Defendants, ACN will be seeking a stay and administrative stay from the Second Circuit. ACN's position is therefore the same as before: while ACN understands the District Court's Orders, and intends to comply with its obligations, it also intends to pursue all of its rights and remedies and does not believe it is a fair or efficient use of its resources to proceed with further meet and confer efforts at this time. We note that Plaintiffs have not yet responded to our last email regarding the NDA language, which ACN has indicated it is willing to negotiate as a separate issue.

Stephanie

From: Andrew Wilson <awilson@ecbalaw.com>
Sent: Tuesday, May 26, 2020 9:40 AM
To: Niehaus, Stephanie E. <stephanie.niehaus@squirepb.com>
Cc: John Quinn <jquinn@kaplanhecker.com>; Nick Bourland <NBourland@ecbalaw.com>
Subject: [EXT] RE: Doe v. Trump

Please see attached.

[O. Andrew F. Wilson](#)

Partner

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From: Andrew Wilson
Sent: Thursday, May 21, 2020 9:37 PM
To: Niehaus, Stephanie E. <stephanie.niehaus@squirepb.com>
Cc: John Quinn <jquinn@kaplanhecker.com>; Nick Bourland <NBourland@ecbalaw.com>
Subject: Doe v. Trump

Please see attached.

[O. Andrew F. Wilson](#)

Partner

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EXHIBIT B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Jane Doe, *et al.*,

Plaintiffs-Appellees,

v.

No. 20-1228

The Trump Corporation, *et al.*,

Defendants-Appellants.

RESPONSE OF PLAINTIFFS-APPELLEES TO DEFENDANTS- APPELLANTS' MOTION FOR ADMINISTRATIVE STAY

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May 27, 2020

Counsel for Plaintiffs-Appellants

Although Plaintiffs-Appellees intend to file an Opposition to Defendants-Appellants' Motion To Stay Pending Appeal or for Expedited Review, Plaintiffs-Appellees do not oppose the entry of a temporary administrative stay to facilitate this Court's expeditious consideration of that motion. *See Cobell v. Norton*, No. 03-5262, 2004 WL 603456, at *1 (D.C. Cir. Mar. 24, 2004) (per curiam) (explaining that the sole purpose of an administrative stay "is to give the court sufficient opportunity to consider the merits of [a] motion for a stay pending appeal," and that the entry of an administrative stay "should not be construed in any way as a ruling on the merits" of such motion).

May 27, 2020

Respectfully Submitted,

/s/ Roberta A. Kaplan

Roberta A. Kaplan

John C. Quinn

Joshua Matz

Alexander J. Rodney

Raymond P. Tolentino

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CERTIFICATE OF COMPLIANCE

This Response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because this Response contains 110 words, excluding the parts of the Response exempted by Federal Rule of Appellate Procedure 32(f). This Response complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

May 27, 2020

/s/ Roberta A. Kaplan
Roberta A. Kaplan
Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, I electronically filed the foregoing Response with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

/s/ Roberta A. Kaplan
Roberta A. Kaplan
Counsel for Plaintiffs-Appellants